IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12075 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NOORBIBI MALANGBHAI MANSURI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12075 of 1993

MR SUNIL K SHAH for Petitioner No. 1-6

MR SP HASURKAR, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 01/10/2004

ORAL JUDGEMENT

1. The petitioners have challenged the order of the revisional authority dated 16-8-1988, confirming the

order of the Collector made on 3-7-1987, by which the unauthorized construction made on 1500 sq. mtrs. of land of survey No.825 part of village Bapod was ordered to be removed on the ground that the construction was made without obtaining the requisite permission under Section 65 of the Bombay Land Revenue Code.

2. Originally, the land admeasuring 3339 sq. mtrs. of survey No.825 of village Bapod in Vadodara Taluka was running in the account of Malangbhai Chandbhai. Out of that land, the excess vacant land was acquired and only 1500 sq. mtrs. of land remained with the occupant and his heirs, who are the petitioners. Malangbhai had a large family. He, therefore, constructed certain rooms in the said 1500 sq. mtrs. of land. According to the petitioners, the construction was made after getting the layout plan approved by the Town Planing Officer on 27-9-1985 by his permission No. L/902/85-86 and after getting "Rajachitthi" from the Baroda Municipal Corporation for making the construction, as per the layout plan. The layout plan and permission granted by the Corporation are produced at Annexure "B" to the petition.

3. However, since Malangbhai Mansuri was a deemed purchaser under Section 32 of the Bombay Tenancy & Agricultural Lands Act, 1948, there was restriction on transfer of the land under Section 43 noted in the record of rights and such purchaser could be evicted if he failed to cultivate personally as provided under Section 32-R. In the present case, there was no question of any transfer involved in contravention of Section 43 of the Act, nor was any proceeding on the ground of not cultivating 1500 sq. mtrs. of land indicated under Section 32-R of the Act. The proceedings, however, were commenced under Section 66 of the Bombay Land Revenue Code for summary eviction since the Collector's permission, as contemplated under the latter part of Section 65 was not obtained.

4. During the proceedings, the petitioners relied upon the government resolution dated 27-8-1980, a copy of which is at Annexure "E" to the petition. If the construction was in accordance with the Town Planning Scheme, Building Regulations, Ribbon Development Rules etc., then, for not obtaining permission of non-agriculture use, penalty of 40 times of the annual non-agricultural assessment was to be levied, as provided in paragraph 3(1)(a) of the resolution dated 27-8-1980.

4.1 It was also the case of the petitioners that no

response was given to the application made by them under Section 65 of the Code and therefore, the permission was deemed to have been granted after the expiry of the period stipulated in the proviso to Section 65(1) of the Code.

5. The Collector, Vadodara, while considering the resolution dated 27-8-1980, instead of examining the case of the petitioners under paragraph 3(1)(a), relied upon the paragraph 3(1)(b), which related to cases in which permission for construction could not have been granted due to violation of the Town Planning Schemes, Construction Rules & Regulations and / or Ribbon Development Rules etc., in which case, unauthorized construction was required to be removed. It was held in paragraph 5 of the order by the Collector that the unauthorized construction was required to be removed under paragraph 3(1)(b) of the resolution dated 27-8-1980 issued under Section 66 of the Code. It was inferred that the occupant intended to sell the buildings constructed on the said land at a latter point of time.

6. The State Government, in exercise of its revisional jurisdiction under Section 211 of the Code, while holding that Section 43 of the Tenancy Act was not attracted against the petitioners, held that the Collector had no option, but to summarily evict the petitioners in view of the provisions of Section 32-R of the Act. It was held that a power of attorney was executed by the occupant that an authority to make transfer and therefore, the rooms must have been constructed for transferring them at a latter stage and not for the family members of the occupant. The revision application was, therefore, rejected.

7. It was contended on behalf of the petitioners that the revisional authority did not consider the provisions of paragraph 3(1)(a) of the resolution dated 27-8-1980, on which the petitioners had relied upon. In fact, the petitioners had filed an application on 27-8-1987 before the Collector, requesting him to review his order and in that application, it was clearly contended that reliance on paragraph 3(1)(b) of the resolution was placed only with a view to evict the petitioners and that the said provision was not applicable. The learned counsel further argued that the petitioners had already applied for permission under Section 65 of the Code and the Collector did not send any reply within the period of three months and therefore, the permission was deemed to have been granted. He submitted that though this contention was specifically

taken up in ground (15) of the revision memo, the revisional authority did not care to examine the same.

8. The learned Assistant Government Pleader, supporting the reasoning given by the Collector and the revisional authority, submitted that there was no warrant for interference with these orders in exercise of the writ powers of this Court. He contended that since the occupant was a deemed purchaser under Section 32 of the Tenancy Act and had failed to cultivate the land, the petitioners who are now the occupants were liable to be evicted even on that ground. He submitted that since the land was admittedly used for a purpose other than the purpose for which it was assessed, without obtaining the permission of the Collector, the petitioners were liable to be summarily evicted under the provisions of Section 66 of the Code.

9. It is evident from the record that the petitioners' case clearly was that they had constructed the houses in the land in question only after getting the layout plan sanctioned by the Town Planning Officer on 27-9-1985 and after obtaining the permission (Rajachitthi) from the Baroda Municipal Corporation on 27-9-1985. In the memo of the revision application, it was clearly stated by the petitioners as under :

> "..... the applicants had prepared a layout plan for proposed construction and the said plan has been approved by the Town Development Officer on 27-9-85 by his Permission No. L/902/85-86 and the said layout has been produced before the Baroda Municipal Corporation for obtaining necessary permission for making proposed construction and thereafter, the Baroda Municipal Corporation has verified the plan of proposed construction as well as the situation of the disputed land and also after considering the Municipal Bylaws and Rules and Regulations, the Baroda Municipal Corporation has granted permission on 27-9-1985. ..... "

9.1 In ground (15) of the memo, it was clearly contended that the applicants had applied for obtaining permission under Section 65 of the Code before the Collector and the Collector failed to give reply of the said application within three months.

10. The resolution dated 27th August 1980 was issued

under the provisions of Section 66 of the Code and in paragraph 3(1)(a) thereof, the procedure in respect of the unauthorized constructions on agricultural land which were made in accordance with the Building rules and Regulations, Town Planning Scheme and Ribbon Development Rules was indicated, and it was clearly provided that, in such cases, forty times of the non-agricultural annual assessment be imposed by way of penalty. Therefore, it was incumbent on the revisional authority, as also on the Collector to have examined the case of the petitioners in the context of the provisions of paragraph 3(1)(a) of the said Resolution. The Collector has, without taking into consideration that the construction was made after getting the layout plan sanctioned by the Town Planning Officer and obtaining the construction permission from the Municipal corporation, erroneously invoked the paragraph 3(1)(b) and the revisional authority failed to notice this basic error committed by the Collector and thereby has itself committed a jurisdictional error by not taking into consideration this material aspect which which was specifically mentioned in the memo of revision application. The revisional authority also did not consider the case of the petitioners that they had applied for permission under Section 65, but there was no response from the Collector within the stipulated period of three months and therefore, permission was deemed to have been granted. The revisional authority has, therefore, by not considering the important material on record, committed an error in exercise of its jurisdiction while deciding the revision application.

11. The impugned order of the revisional authority cannot, therefore, be sustained and is hereby set aside, with a direction to the revisional authority to consider the revision application of the petitioners afresh and take a decision thereon in accordance with law after hearing the petitioners. The order of the Collector will not operate until the revisional authority takes a decision in the matter. Rule is made absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

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